

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

INDIGENOUS ENVIRONMENTAL
NETWORK and NORTH COAST RIVERS
ALLIANCE,

Plaintiffs,

vs.

PRESIDENT DONALD J. TRUMP, et al.,

Defendants,

and

TRANSCANADA KEYSTONE
PIPELINE, LP, a Delaware limited
partnership, and TC ENERGY
CORPORATION, a Canadian Public
Company,

Defendant-Intervenors.

4:19-cv-00028-BMM

**SECOND ORDER
ON MOOTNESS**

Indigenous Environmental Network (“IEN”) and North Coast Rivers Alliance (“NCRA”) (collectively, “Plaintiffs”) brought this action against President Donald J. Trump and various government agencies and agents in their official capacities (“Federal Defendants”). Plaintiffs allege that President Trump violated the Property Clause of the U.S. Constitution, the Commerce Clause of the U.S.

Constitution, and Executive Order 13,337 when he issued a Presidential Permit in 2019 (“2019 Permit”) to Defendant-Intervenors TransCanada Keystone Pipeline, LP and TC Energy Corporation (collectively, “TC Energy”) to construct a cross-border segment of the Keystone XL oil pipeline (“Keystone”).

President Joseph R. Biden signed an Executive Order on January 20, 2021 to revoke the 2019 Permit. *See* Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis, Exec. Order 13,990, 86 Fed. Reg. 7,037, 7,041 (Jan. 25, 2021). President Biden’s revocation noted that the 2019 Permit included an express condition that the President could revoke that permit at “the President’s sole discretion.” *Id.*

The Court sought briefing on whether President Biden’s revocation rendered the above-captioned case moot. (Doc. 162). The Court subsequently issued an Order on Mootness on May 28, 2021. (Doc. 166). The Court determined in part that:

The case presents a live controversy because the Court can provide relief to Plaintiffs by ordering the removal of the constructed border segment. . . . This case does not involve mere text in the Federal Register. Rather, it involves a physical pipeline that today sits under the ground at the U.S.-Canada border. The Court can provide Plaintiffs with requested injunctive relief by ordering TC Energy to remove that pipeline from the ground.

(Doc. 166 at 9–10). The Court further determined that even if the Court could not provide such injunctive relief, that the case met an exception to mootness.

“Specifically, President Biden’s revocation represents the voluntary cessation of unlawful activity. It remains unclear whether President Biden or a future president simply could issue unilaterally another permit to TC Energy.” (Doc. 166).

TC Energy announced that it “definitively terminated” Keystone on June 9, 2021. (Doc. 167 at 3). TC Energy has since filed a Motion to Dismiss. (Doc. 169). TC Energy again argues that the case proves moot in light of this new announcement. (Doc. 170). Plaintiffs argue that the case remains live. (Doc. 172).

Nothing in TC Energy’s announcement alters the status of this case as the Court assessed in its Order on Mootness. (Doc. 166). The case presents a live controversy for substantially the same reason it did before. (Doc. 166 at 7–10, 14). Even if the case failed to present a live controversy, it meets a mootness exception. (Doc. 166 at 10–13). The 2019 Permit presents a live controversy to the Court.

The Court will issue an order on the parties’ pending motions for summary judgment in due course. Federal Defendants and TC Energy shall continue to apprise the Court on any changes, expansions, or alterations to the existing pipeline infrastructure from the 1.2-mile border crossing segment during the pendency of this matter.

ORDER

Accordingly, **IT IS ORDERED** that TC Energy’s Motion to Dismiss (Doc. 169) is **DENIED**.

Dated the 30th day of July, 2021.

A handwritten signature in blue ink that reads "Brian Morris". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Brian Morris, Chief District Judge
United States District Court